Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996	)	
	)	CC Docket No. 96-238
Amendment of Rules Governing	)	
Procedures to Be Followed When	)	
Formal Complaints Are Filed	)	
Against Common Carriers	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS CORPORATION

Frank W. Krogh
Mary L. Brown
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 887-2372

Its Attorneys

Dated: January 6, 1997

TABLE OF CONTENTS

SUMMARY

MCI Telecommunications Corporation (MCI) supports the Commission's goal to make its formal complaint procedures more expeditious, efficient and effective. Some of the proposals presented in the Notice, however, should be modified so as not to foreclose relief to aggrieved parties through overly stringent pleading requirements or cause unnecessary burdens for Commission staff and the parties.

MCI agrees that more should be accomplished in the pre-filing stage of complaint proceedings. MCI suggests that parties would be more forthcoming in response to information requests and settlement overtures before complaints are filed if a party's refusal to provide relevant information were permitted to justify a relaxation of corresponding pleading requirements for the other party. For example, a defendant's refusal to provide cost support data for a tariff in response to complainant's pre-filing request would justify complainant's allegation of the rate's unreasonableness based on information and belief, notwithstanding a general rule prohibiting allegations based on information and belief. Without such a relaxation of the pleading requirements in the face of other parties' withholding of information, a prohibition against allegations on information and belief or a requirement of documentary support for allegations will simply reward such withholding of information by precluding effective relief for violations of the Communications Act. Moreover, such relaxation of the pleading requirements should not be merely a

matter of discretionary waiver, but, rather, should be established in the formal complaint rules.

MCI supports the Commission's stated goal of lodging greater control over the discovery process with Commission counsel assigned to each case, particularly through the proposed use of status conferences. MCI strongly objects, however, to the proposal to eliminate self-executing discovery. If discovery is discretionary, Commission counsel will have to review such requests as well as oversee the discovery that is allowed. It is unrealistic to assume that the informal information exchanges that might occur in the pre-filing stage will obviate the need for formal discovery.

MCI supports the Commission's proposal to permit complainants to bifurcate proceedings into liability and damages phases. MCI opposes, however, the inconsistent proposal to require a detailed calculation of damages in the complaint. Generally, that is impossible without discovery. Instead, the complainant should be required to provide its damages calculation methodology and to identify the data it needs. Finally, MCI opposes the proposal to eliminate briefing in cases where there has been no discovery, since whether or not discovery has been conducted may have no relevance to the need for briefing in a given case. Instead of eliminating briefing for certain cases, Commission counsel should exert close supervision over the scheduling, format and scope of briefing in all cases.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996	)	
	)	CC Docket No. 96-238
Amendment of Rules Governing	)	
Procedures to Be Followed When	)	
Formal Complaints Are Filed	)	
Against Common Carriers	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), by its undersigned attorneys, submits these comments in response to the Commission's Notice of Proposed Rulemaking (Notice)[1] tentatively setting forth modifications to its formal complaint procedures, in Sections 1.720 through 1.735 of the Commission's Rules,[2] in order to meet the new deadlines established by the Telecommunications Act of 1996 (1996 Act).[3] MCI recognizes that certain provisions in the 1996 Act, amending the Communications Act of 1934, place enormous pressures on the Commission to complete certain types of formal complaint proceedings in extremely short periods of time. Moreover, the procedural deadlines imposed by Sections 251 and 252 of the Communications Act on this Commission, state commissions and parties engaged in negotiations and arbitrations pursuant to those provisions and the need to ensure efficient and expeditious entry into local markets require an expedited,

---

[1] FCC 96-460 (released November 27, 1996).

[2] 47 C.F.R. §§ 1.720-1.735.

[3] Pub. L. No. 104-104, 110 Stat. 56.

efficient enforcement mechanism if the goal of meaningful local competition is to be realized.

Given such time pressures, the Commission has little choice but to accelerate its formal complaint proceedings. MCI accordingly supports the Commission's overall approach in the Notice, particularly its emphasis on pre-filing activities.

As the formal complaint procedures are accelerated, however, the Commission must be more careful than ever to safeguard the due process rights of parties to such proceedings and to make sure that complainants are not foreclosed by unrealistically stringent pleading requirements from securing relief from injuries caused by violations of the Communications Act. As will be explained, some of the changes proposed in the Notice must be modified in order not to undermine the statutory complaint remedy in Sections 206-09 of the Communications Act. Other alterations in the Commission's proposals are also necessary so as not to create unintended delays and additional burdens on Commission staff and the aggrieved parties, particularly new entrants into the local marketplace. With the modifications suggested in these comments, the Commission will realize its goal of improving both the speed and the effectiveness of the formal complaint process.

Introduction

As the Notice points out, the 1996 Act imposes expedited deadlines for the resolution of various types of complaints. For example, Section 208(b)(1) of the Communications Act requires

that any complaint proceeding challenging the lawfulness of a charge, classification, regulation or practice be concluded within five months. Section 271(d)(6)(B) of the Communications Act requires that any complaint concerning the failure of a Bell Operating Company (BOC) to meet the conditions for approval under Section 271(d)(3) be acted on within 90 days, unless the parties agree otherwise.

In order to accomodate these and other deadlines, the Notice proposes changes to the Commission's formal complaint procedures. The Notice proposes that the revised procedures be used for the resolution of all formal complaints, including those not affected by the 1996 Act. The Notice proposes that the complainant be required to discuss settlement with the defendant before bringing suit and so certify in the complaint. In order to help speed up complaint proceedings, it is also proposed that complainants serve defendants directly, simultaneously with the filing of the complaint with the Commission.

More stringent pleading requirements are also proposed for complaints and answers. The Notice seeks comment on whether complainants should continue to be permitted to allege facts on information and belief[4] and proposes that defendants not be permitted to generally deny allegations but, rather, include specific admissions or denials of each averment in the complaint.[5] The Notice proposes that complainants and defendants

---

[4] See Notice at ¶ 38.

[5] See id. at ¶ 24.

be required to support allegations and denials with affidavits and other relevant documentation, including agreements and correspondence, and that complaints and answers include a copy or description of all documents, data and tangible things in the party's custody or control relevant to the complaint or answer and the full identification of all individuals with discoverable information.[6]

The Notice also proposes that any motion or other request for relief filed in a complaint proceeding include proposed findings of fact and conclusions of law to support the relief requested, supporting affidavits and other documentation and a proposed order containing full factual and legal support in the same format as a Commission reported order. The parties would also be required to file a joint statement of proposed stipulated facts after the answer is filed.[7]

A. Expedited Procedures for Local Competition Issues

As a preliminary matter, MCI agrees that the complaint procedures to be established in this proceeding should be applied to all formal complaint cases, not just those categories of cases subject to specific deadlines under the 1996 Act.[8] The Commission also seeks comment, however, on the need for special requirements and procedures for handling complaints arising under

---

[6] Notice at ¶¶ 23-24, 36-40, 43-46.

[7] Id. at ¶¶ 25, 41-42, 80.

[8] See id. at ¶ 2.

particular provisions of the Communications Act.[9] Because there are so many obstacles to competitive entry into the local service market and because of the need to resolve any disputes as to the interconnection, provisioning and other conditions of local entry speedily, MCI submits that all formal complaints arising under Sections 251 or 252 of the Communications Act or otherwise raising local service market entry issues should be resolved on an expedited basis, irrespective of the statutory deadlines that may apply to such cases. Typically, such cases will raise the same issues, or very similar issues, as cases brought under Section 271(d)(6) of the Act for a BOC's failure to meet the conditions for in-region interLATA service authority, since most of such in-region conditions are established in Sections 251 and 252. Since Congress has established a 90-day deadline for the resolution of Section 271(d)(6) complaint cases, the same period of time would be a reasonable deadline for cases arising under Section 251 or 252. Without such an accelerated procedure for local competition issues, local competition may be unreasonably delayed.

Moreover, MCI also proposes that where an administrative or judicial record already exists with regard to a formal complaint proceeding by virtue of a prior proceeding, the Commission ought to be able to resolve local competition issues in 60 days. Such prior record would meet most of the informational and briefing requirements applicable to formal

---

[9] Id. at ¶ 26.

complaint cases, and it should not be necessary to recreate a record anew before this Commission. Any gaps in such a record could be supplemented fairly quickly, allowing for a speedy resolution of such cases.

B. Pre-Filing Procedures

MCI agrees that, given the short deadlines imposed by the 1996 Act in a variety of formal complaint situations, one way to make up some of the time that has been taken away from the Commission and the litigants is to accomplish as much as possible before the complaint is ever filed. The Notice proposes to require that any formal complaint contain a certification that the complainant has discussed, or attempted to discuss, a good faith settlement of the dispute before filing the complaint.[10]

MCI believes that this proposal does not go quite far enough, since it could be satisfied by a single telephone call. MCI proposes that, in order to make it possible to accelerate the complaint procedures in the manner suggested in the Notice, the pre-filing period be fully utilized to accomplish some of the work that is now performed at the discovery stage of litigation, but without the delays that typically accompany the discovery process. The parties should use that period to familiarize themselves with the facts and the law as much as possible, thereby enabling the defendant to "hit the ground running" as soon as the complaint is served. Unless a way is found to make

---

[10] Notice at ¶ 28.

this all happen in the pre-filing stage, without delaying the filing of valid complaints, it will be impossible -- consistent with due process requirements -- to impose such stringent pleading requirements on the parties, especially the complainant, as the Notice suggests.

Of course, as the Commission well knows from its experience with the formal complaint process, the pre-filing stage will not be nearly as productive as it could be without some regulatory incentives. The Commission's procedures must be structured in a way that induces parties to provide information to each other without delay and to seriously discuss settlement before a complaint is ever filed. One way to do that would be to reward the quick disclosure of information and to penalize the withholding of information at the pre-filing stage through the use of presumptions modifying the pleading requirements otherwise imposed on the parties. Thus, a party's failure or refusal to respond to a pre-filing information request, or an inadequate response, would justify the other party's failure to meet a corresponding pleading requirement.

To illustrate, assume that the Commission adopts its proposals to require that complaints be supported by relevant documentary evidence and to prohibit allegations on information and belief. MCI suggests that such rules be relaxed where a carrier has not been forthcoming in response to a ratepayer's pre-filing information requests. For example, take the situation where an incumbent local exchange carrier (ILEC) doubles its

charge for an access rate element. A ratepayer may believe that the new rate is unreasonable under Section 201(b) of the Communications Act, even though it does not violate the price cap rules. Before filing a complaint, the ratepayer would discuss the issue with the carrier and would request, under the standard confidentiality agreement set forth in the formal complaint rules, sufficient cost support data from the carrier to demonstrate that the rate was reasonably cost-based.

If the carrier refuses to provide such information, or provides only a partial response, the ratepayer ought to be able to state in the complaint that, on information and belief, the rate is not cost-based, citing the doubling of the rate and the defendant's refusal to provide any cost data supporting the rate. The defendant's refusal to provide all of the necessary data, under this approach, would justify the absence of any documentation or other evidence cited in the complaint, other than the tariff filing doubling the rate, and would justify the complainant's having to rely on "information and belief" for its claim.

Such a presumption would allow complaint proceedings to move ahead expeditiously while safeguarding injured ratepayers' and competitors' due process rights. Persons with valid causes of action could not be kept from filing complaints through defendants' stonewalling. In regard to this point, the Commission's procedures could provide that such a presumption will be applied where the complaint recites that the defendant

has not responded in writing to a written pre-filing information request within a reasonable, but brief, time -- such as two weeks. A similarly short deadline could be imposed on the defendant's time to respond to a settlement overture before the complainant may file suit.

Such short deadlines for responding to pre-filing information requests and settlement overtures are especially necessary in the Section 251/252 context, in which competitive local service providers will be negotiating or arbitrating a wide range of issues with ILECs. Since ILEC intransigence on any of the "checklist" interconnection and provisioning issues can irreparably delay competitive entry into local markets, the pre-filing activities must not become another opportunity for such delay. In fact, MCI has brought a complaint proceeding before the California Public Utilities Commission alleging a wide variety of actions by Pacific Bell obstructing MCI's efforts to enter the local service market in California. In that case, Pacific Bell never responded to MCI's request to address these issues.[11] Accordingly, there needs to be a short fuse on pre-filing activities in order to prevent complainants from being held hostage to defendants' stonewalling.

Without the use of the presumptions suggested here, the stringent pleading requirements proposed for complaints in the

---

[11] See Complaint at 4 and Attachment 1, MCI Telecommunications Corporation (U 5001 C) v. Pacific Bell (U 1001 C) and Pacific Bell Communications, Dkt. C. 96-12-026 (Cal. PUC filed Dec. 11, 1996).

Notice would create an insuperable obstacle to the filing of many complaints. Indeed, very often, in the absence of such a presumption, the most egregious violations would be the most invulnerable to complaints, since ratepayers of monopoly services have no access to the cost support data or other information they may need to demonstrate unreasonableness or discrimination. Complainants making such allegations thus must be allowed a great deal of leeway in basing such claims on information and belief, without much documentary support.

At the same time, such a presumption would be self-regulating. A carrier that could defend a rate increase would turn over the cost support requested by the ratepayer in the hypothetical above, rather than expend time and resources in a complaint proceeding. Alternatively, if the defendant were confident that the complainant could not state a cause of action, even if allowed to plead the missing facts on information and belief, the carrier could refuse to turn over the requested data. Lacking such information, the complainant would probably have to base some of the allegations on information and belief, with an explanation for the absence of more detailed support. Following service of such a complaint, the defendant could move to dismiss for failure to state a claim. In deciding such a motion, the Commission would have to treat the allegations on information and belief as if they were supported by adequate detail, since the complaint contained a reasonable justification for the absence of greater detail.

C. Service of Pleadings

MCI supports the proposals to have the complainant serve the complaint directly on the defendant, as well as the Secretary's Office of the Commission and the appropriate branch or division chief, and to serve all subsequent pleadings by overnight mail or facsimile followed by regular mail. There is no need for the delay inherent in the current two-step complaint service process or in the use of regular mail.[12] MCI also supports the maintenance of an electronic directory of agents authorized to receive service of process on behalf of carriers subject to the Communications Act.[13] MCI suggests that the Commission require that each carrier's listing in the electronic directory also appear in a paper directory to be maintained in the Secretary's Office pursuant to Section 413 of the Communications Act. Having the listings of all carriers' agents appear in both ways would facilitate service of process in formal complaint actions and all other Commission proceedings.

MCI is less certain that the intake form set out in Appendix B to the Notice would be of much use. It is doubtful that anyone filing a defective complaint is likely to notice that fact or to reveal such inadequacy on an intake form. Rather, such forms would probably be filled out fairly mechanically and would

---

[12] See Notice at ¶¶ 31-32. Inevitable bureaucratic snafus can make the service process even longer. Last year, one of MCI's complaints was lost somewhere between the lock box in Pittsburgh, where MCI's filing fee was deposited, and the Enforcement Division.

[13] Notice at ¶ 33.

therefore not provide much information to the Commission, except, perhaps, relating to the category of complaint. In order to save Commission resources, however, in light of the proposal to have complainants serve defendants directly, the Commission can probably omit the initial review of the complaint that has been performed in the past.[14] If a complaint is defective, defendant carriers can be relied on to file dispositive motions bringing such defects to the Commission's attention.

D. Format and Content Requirements

MCI generally supports the Commission's proposal to require parties to provide more support for complaints and answers, including affidavits and other documentary support, where possible. As explained above, however, it is crucial that stringent pleading requirements not be converted into a tool to protect the BOCs' local monopolies from claims of discrimination and other unlawful activities alleged by competitors that lack sufficient information to prove a case. The complaint remedy would be irretrievably subverted if the most vulnerable competitors, not in a position to demand data from their monopoly service providers, were to be the least able to file complaints to remedy monopoly abuses.

In particular, as explained above, allegations based on information and belief should only be disallowed where complainants have an opportunity to secure the information they

---

[14] See Notice at ¶ 34.

need from the defendant prior to filing but choose not to do so. Where a defendant withholds such information in response to a request by the complainant, and the complainant's attempt to obtain the necessary information is recited in the complaint, such recitation must be deemed sufficient to support allegations based on information and belief.

Similarly, a requirement that affidavits and other documentary support be attached to complaints would be useful as long as the complainant were in a position to provide such support. The illustration in the Notice of a complaint alleging a violation of Section 251 or 252 of the Communications Act is one situation where such supporting documentation, such as a written interconnection request, should be fairly easy to provide. Similarly, where a tariff is relevant to a complaint, it would be simple to attach the relevant portion of the tariff.[15]

In other situations, such as those involving discrimination, documentary support might be nonexistent. Customers receiving more favorable treatment from a BOC might not be willing to say so, and certainly not in writing. Moreover, prior to the compulsion of discovery, the BOC is not going to be of much assistance, leaving a complainant with little support for otherwise valid claims of discrimination. There, too, MCI suggests that a complainant be permitted to omit such documentation if it can provide a reasonable explanation in the

---

[15] See Notice at ¶ 45.

complaint for the lack thereof, including efforts to obtain such support. A defendant may then challenge, and the Commission can assess, the reasonableness of complainant's omission of documentary support and explanation therefor in the same manner as the sufficiency of a complaint is reviewed now. Even the situation posited in the Notice of a complaint alleging a violation of Section 251 or 252 may well be one where the complainant, through no fault of his own, cannot provide much documentation. For example, it might be impossible to provide a written denial of interconnection where the defendant simply chooses not to respond to the complainant's written request for interconnection.

Moreover, although MCI supports the proposal of a waiver process for parties who cannot meet the pleading form and content requirements for financial or other reasons, the exceptions MCI is suggesting should not be merely a matter of discretionary waiver. Any regulations prohibiting allegations on information and belief or requiring documentary support for pleadings should also provide for exceptions in situations in which the absence thereof is reasonably explained in the relevant pleading, especially where the missing information is in the possession of a defendant that refuses to provide it in response to a pre-filing request.

MCI supports the proposals in the Notice to require more detailed allegations in pleadings and is not opposed to the proposals to require pleadings to include the identification of

all persons with relevant discoverable information, and the subjects of such information, and a copy or description of all relevant documents and other tangible things. The Commission should be under no illusion, however, that these proposals will have a significant impact on the efficiency of the complaint process. Complaint cases are generally not held up because complainants withhold the identities of persons with relevant information. Rather, it is the defendant that typically is in possession of relevant information, and the complainant is not going to be able to identify which of defendant's employees has discoverable information.

It is also not clear that a requirement that all relevant documents be identified in or attached to pleadings, proposed in paragraph 43 of the Notice, will accomplish any of the Commission's goals. MCI has already discussed the proposal in paragraph 39 of the Notice -- that parties attach documents they rely on. As discussed in the Notice, the benefits of that proposal are clear. Parties are apt to regard documents they rely on, however, as the only items relevant to the case, leaving nothing in the category of "paragraph 43" documents -- those that are relevant to the case -- that are not already attached as material on which the parties rely. To some extent, parties, especially complainants, would have to guess what kinds of material the other party would regard as relevant or face the risk of possible sanctions for withholding information that they

did not view as relevant and that no one had requested.[16]

MCI does not believe that the proposals concerning the format and content of motions will be especially useful.[17] Requiring that all motions contain proposed findings of fact and conclusions of law with supporting legal analysis and that all proposed orders be in the same format as reported Commission orders will add significantly to the parties' burdens without providing much assistance to the Commission.

In MCI's experience, motions submitted in the course of formal complaint proceedings, for the most part, involve discovery issues and typically do not turn on fine-grained complex legal issues requiring the sort of elaboration that the Notice proposes. Rather, they typically involve fairly straightforward applications of garden variety relevance and privilege principles to various types of information sought in discovery. Deciding such motions simply requires a basic understanding of the issues raised in the pleadings and a logical application of those issues to the types of discovery materials sought to be compelled. Typically, discovery motions are resolved by informal letter orders, which are not in the format of reported Commission orders. The addition of largely undisputed legal boilerplate to discovery motions and verbiage to

---

[16] It is because of problems like this that MCI opposes the restrictions on discovery proposed in the Notice. As more fully explained below, it is simply unrealistic to hope that any other requirements can really substitute for discovery.

[17] See Notice at ¶¶ 41-42.

proposed orders, most of which will not be needed or relied upon by Commission counsel, will not make the Commission's analysis any easier or quicker.

E. Answers

MCI supports the proposal to reduce the defendant's time to file an answer from 30 to 20 days. The pre-filing activities proposed in the Notice should provide the defendant with a sufficient "head's up" that 20 days will provide adequate time to prepare a properly detailed answer. As in the case of allegations based on information and belief in the complaint, however, general denials should be permitted in the answer where the complainant has not been forthcoming with the defendant prior to the filing of the complaint, leaving the defendant with inadequate information to provide detailed answers to every allegation in the complaint. In such a case, a general denial should be permitted where the defendant provides a reasonable explanation in the answer why a more detailed response is not possible.

F. Discovery and Status Conferences

MCI supports the Commission's overall goal, as stated in the Notice, of providing for greater control by the Commission staff over the discovery process. Discovery could be streamlined and made more effective if Commission counsel were involved earlier in the process. Some of the proposals in the Notice for

streamlining discovery, however, would deprive the parties of needed discovery without necessarily speeding the process. For example, eliminating self-executing discovery, thereby leaving all discovery to be resolved as a matter of discretion by Commision counsel, or restricting the first set of interrogatories to even less than the current limit of 30 interrogatories, would only add to the parties' and Commission staff's burden, since parties would constantly be seeking leave to file interrogatories or a greater number than the maximum specified in the rules.

In MCI's experience, discovery is almost always vital to one side or the other in any formal complaint proceeding, virtually guaranteeing one or more requests to serve discovery in every case. Discovery almost always enables the parties to narrow the issues and fill gaps that could not have been filled any other way. Accordingly, Commission counsel will have to rule on motions to allow discovery in almost every case, in addition to overseeing the discovery that is allowed. Eliminating self-executing discovery thus will not accomplish much.

The Notice suggests that such restrictions on discovery would be feasible because of the other proposals to require a greater exchange of information prior to and during the pleading stage. As explained earlier, however, complainants typically do not start off with a wealth of information that they can attach to or recite in their complaints. Usually, it is the defendant that possesses most of the information relevant to the complaint,

and defendants are not likely to proffer such material voluntarily in their answers. Even after reviewing the complaint, a defendant is likely to have a much different view from the complainant of what is relevant to the case. Thus, what little material that most complainants will have can be attached to complaints, and material relevant to defenses will be attached to answers, leaving a tremendous gap of necessary information consisting of material in the defendant's possession relevant to the complaint that will not surface without compulsion. The only way that the complainant is going to secure access to such material is therefore through the use of discovery.

The notion that more stringent pleading requirements will somehow make discovery less important is thus a vain hope. In light of the increasing importance of the complaint process, as competition begins to replace regulation of telecommunications carriers, this is no time to make it even less likely that complainants will be able to obtain from monopoly defendants the information they need to prove a case.

Other techniques proposed in the Notice, however, would advance the Commission's goal of making discovery more efficient and effective by giving Commission counsel greater control over the process at an early stage. The proposal to discuss claims and defenses and the necessity, scope and timetable for completion of discovery at the initial status conference would enable Commission counsel to maintain tight control over

discovery without infringing on the parties' discovery rights.[18]

The proposal to have Commission counsel actually rule on objections to discovery at the initial status conference, however, is probably too ambitious.[19] As a practical matter, if Commission counsel were to actually rule on discovery at the initial status conference, such a conference probably could not be held only 10 business days after service of the answer, since that would leave insufficient time for both parties to prepare and serve interrogatories, to frame objections thereto and responses to those objections. The Notice does not appear to propose a revised discovery schedule, so it is difficult to suggest when the initial status conference should be held. If objections to discovery are going to be discussed, however, there should be some allowance for the party seeking discovery to react to the other side's objections to discovery, even if only a couple of days in order to be able to discuss the issues at the status conference. Accordingly, even an extremely accelerated discovery schedule would put the initial status conference somewhere between 20 and 30 days following the service of the answer.

MCI supports the proposal to have the parties submit a joint proposed order memorializing the oral rulings made by Commission counsel at status conferences. That would force the parties to cooperate in an effort to present as accurate a recording of the

---

[18] See Notice at ¶ 58.

[19] See id. at ¶ 52.

resolution of disputed issues as possible and would save Commission counsel time. Tape recording status conferences or sharing the cost of stenographers would also promote such a goal.

The Notice also seeks comment as to whether documents identified in, or attached to, the complaint or answer, but not specifically relied on by either party, should be filed with the Commission.[20] Any documents not relied on by either party probably should not be filed with the Commission, simply because of the inconvenience to the Commission of having to keep voluminous documents that are not determinative of the outcome of the case. If neither party is relying on a document, it is a fairly safe bet that the document is not one that will be of interest to Commission counsel.

G. Damages

MCI supports the proposals concerning bifurcation of damage actions into liability and damages phases and the application of the deadlines in the 1996 Act to each phase separately. MCI has found that such bifurcation provides for greater efficiency, for all of the reasons stated in the Notice. MCI also agrees that such bifurcation should be voluntary on the part of the complainant. In some cases, the calculation of damages will be fairly straightforward, making bifurcation unnecessary. Finally, MCI shares the Commission's concern that if the deadlines are not applied to each phase separately, complainants might not have a

---

[20] See Notice at ¶ 53.